

# NOAA NATIONAL ENVIRONMENTAL POLICY ACT FREQUENTLY ASKED QUESTIONS

## Contents

<b>Introduction</b> .....	1
<b>Acronyms and Abbreviations</b> .....	1
<b>Question Sections</b> .....	2
1. Scope of Analysis .....	2
2. Categorical Exclusions.....	4
3. Environmental Assessments .....	7
4. Environmental Impact Statements .....	8
5. Procedures and Clearance .....	10
6. Additional Questions .....	14

## Introduction

This document provides answers to questions that have been posed to the NOAA National Environmental Policy Act (NEPA) Coordinator Staff in the Office of Program Planning and Integration (PPI). These are detailed answers for specific scenarios. General NOAA guidance on NEPA is available in the [NOAA NEPA Handbook](#). The [NOAA NEPA Website](#) also provides NEPA information specific to NOAA.

These questions and answers should be used as a guide to assist staff in preparing, reviewing, and processing environmental analyses pursuant to NEPA. These answers are not binding on NOAA, other Federal agencies or individuals, and are not intended to circumvent, modify, or replace applicable Federal law or regulations.

## Acronyms and Abbreviations

§	Section	ITS	Incidental Take Statement
CE	Categorical Exclusion	MSA	Magnuson-Stevens Fishery Conservation and Management Act
CEQ	Council on Environmental Quality	NAO	NOAA Administrative Order
CFR	Code of Federal Regulations	NEPA	National Environmental Policy Act
DEIS	Draft Environmental Impact Statement	NMFS	National Marine Fisheries Service (also known as NOAA Fisheries)
EA	Environmental Assessment	NOA	Notice of Availability
EEZ	Exclusive Economic Zone	NOAA	National Oceanic and Atmospheric Administration
EIS	Environmental Impact Statement	NOI	Notice of Intent
EO	Executive Order	PPI	Office of Program Planning and Integration
EPA	Environmental Protection Agency	RIR	Regulatory Impact Review
ESA	Endangered Species Act	RFMC	Regional Fishery Management Council
FEIS	Final Environmental Impact Statement	ROD	Record of Decision
FMP	Fishery Management Plan	RPM	Responsible Program Manager
FONSI	Finding of No Significant Impact	SEIS	Supplemental Environmental Impact Statement
FRFA	Final Regulatory Flexibility Analysis	USFWS	United States Fish and Wildlife Service
HCP	Habitat Conservation Plan		
IRFA	Initial Regulatory Flexibility Analysis		
ITP	Incidental Take Permit		

## **Question Sections**

### **1. Scope of Analysis**

#### **1.1 Is there guidance to determine the scope and content of an EA?**

**A:** Yes, CEQ regulations offer limited guidance for EAs (the bulk is regarding EISs). It is reasonable to expect that an EA would include a range of alternatives in the same general manner as an EIS. [CEQ regulations 40 CFR 1506.5](#) do discuss agency responsibilities for an EA. These regulations indicate that it is the agency's responsibility to determine what level of analysis [the scope and content] is appropriate, rather than the applicant (or the contractor). Refer to [Section 4.0 of the NOAA NEPA Handbook](#) for more information regarding scope and content of EAs.

#### **1.2: What are the criteria for defining reasonable alternatives?**

**A:** Reasonable alternatives are those that may be feasibly carried out based on technical, economic, environmental and other factors, and meet the purpose and need for the proposed action. CEQ regulations require Federal agencies to analyze all reasonable alternatives, including the no action alternative. Refer to [CEQ regulations 40 CFR 1502.14](#) and [Section 4.4.4 of the NOAA NEPA Handbook](#) for more detailed information regarding alternatives.

#### **1.3: What type of NEPA document is required for different types of MSA FMP modifications? What other considerations must be made?**

**A:** In general, the table below shows the type of NEPA document and other considerations used for different types of MSA FMP modifications. NEPA review also applies to fisheries actions beyond the EEZ.

<b>Type of FMP Change</b>	<b>NEPA Review</b>	<b>Other Considerations</b>
Annual specifications for a fishery	Usually an EA, sometimes an EIS	RIR and IRFA for the proposed rule
Framework Adjustment	Usually an EA (sometimes an EIS or SEIS)	RIR and IRFA for the proposed rule
Amendment	EIS or SEIS unless the action is minor in terms of biology, economics, or environmental impacts	RIR and IRFA specific to the new action
FMP for newly regulated fishery	EIS	RIR and IRFA
Proposed Rule and Final Rule implementing any of the above	EA or EIS	IRFA and FRFA in classification of the rule

**1.4: What determines if a project needs an EIS versus an EA?**

**A:** In general, the significance of the environmental impacts of the proposed action and alternatives determines whether an EA or EIS is needed. If it is known that the action and alternatives have potential significant environmental impacts an EIS should be prepared. If the significance of the impacts of the action is unknown, an EA should be prepared to document the potential significance of the impacts and to determine if an EIS will be required. Note that certain actions will automatically require an EIS. [NAO 216-6 Section 6.03c2 and Section 6.03d2](#) describe these actions.

## **2. Categorical Exclusions**

### **2.1: Is a CE memorandum a NEPA document?**

- A:** Yes, a CE memorandum is a type of NEPA document. A CE is a memorandum to the record stating that NOAA has considered the action under NEPA and found that it can be categorically excluded from further NEPA review based on its negligible impacts. A CE applies for specific categories of actions, if an action qualifies for a CE, neither an EA nor an EIS is required. Refer to [Section 3.0 of the NOAA NEPA Handbook](#) for more information regarding CE memoranda. An example CE memorandum template can also be found on the [NOAA NEPA Website](#).

### **2.2: How does an action qualify as a CE?**

- A:** A CE applies if the proposed action falls within a category of actions that NOAA has determined do not individually or cumulatively have significant impact on the environment. Actions within the following categories usually qualify for a CE because they do not normally have the potential to individually or cumulatively significantly impact the human environment: research programs of limited size or duration, financial and planning grants, minor project activities, administrative or routine program functions, real estate actions, minor construction activities, minor facility improvements or additions, and NEXRAD radar coverage. Additional CE categories may also apply to an action; refer to [NAO 216-6 Section 6.03](#) for a description of all CE categories. In every case, the RPM must examine the action carefully to ensure that it will not have a significant effect on the human environment and evaluate the possibility that many of these actions over time might have a significant cumulative effect. For more information regarding types of categorical exclusions refer to [Section 3.1 of the NOAA NEPA Handbook](#).

### **2.3: If a proposed action falls within the range of alternatives analyzed in a previous FEIS, may the action be categorically excluded from the requirement to prepare an additional EIS?**

- A:** No, an existing FEIS does not necessarily result in a future action qualifying for a CE. A CE applies when a proposed action falls within a category of actions that do not individually or cumulatively have significant impacts. CE categories are those that NOAA has found over time to have no significant impact on the environment and are documented in [NAO 216-6](#). Just because an action was evaluated in a previous EIS does not mean that the impacts were not significant. Refer to [Section 3.0 of the NOAA NEPA Handbook](#) for information regarding CEs.

Additionally, since the time an FEIS was filed, circumstances regarding the range, the status of the affected environment, or conclusions based on analysis of alternatives may have changed, requiring a re-evaluation. There may also be other alternatives to which the previously considered alternatives need to be compared. An EA or EIS may need to be prepared for the new action incorporating the previous EIS by reference ([CEQ regulations 1502.21](#)). If appropriate, a FONSI determination could then be made based on the findings of the new EA or a ROD based on an EIS. In some instances, an amended ROD, from a previous EIS, could be prepared if the affected environment has not changed and the scope of the action is within the scope of the previous EIS.

**2.4: Who has authority to determine if a project meets the criteria for a particular CE?**

**A:** The Responsible Program Manager is responsible for making decisions regarding the suitability of the application of a CE to a particular action. The NOAA NEPA Coordinator in PPI does not sign off on CEs. NOAA NEPA Coordinator Staff in PPI appreciate the opportunity to offer advice, especially when there may be uncertainty as whether a CE category applies.

**2.5: For MSA fisheries permit actions, is a separate memorandum necessary with a CE, or is the signed decision memo with a determinations section and an included CE statement sufficient?**

**A:** A CE must be documented with a memorandum to the record, and the CE finding included in the determinations section of the final rule.

**2.6: Can a CE be used as the basis for NEPA analysis for permits to be issued after an EA with a FONSI determination as long as the CE makes reference to the EA/FONSI?**

**A:** No, a new FONSI should be issued every time a new permit is issued that authorizes the same activity as covered under the previous EA provided that the action analyzed in the previous EA is the same. The new FONSI statement could then be attached to the EA for the permit.

**2.7: Do you ever reach a point where a FONSI would not be needed? For example, five years have passed since an EA analyzed an activity and resulted in a FONSI, no new information has come to light to change the analyses in the EA/FONSI, and that activity has since become widely performed and would meet the CE criteria – do you still need to write a new FONSI?**

**A:** A CE may be applicable but it depends on whether the action meets the CEQ CE criteria that states “the action must have no significant effects cumulatively or individually on the environment,” and is documented in procedures adopted by NOAA. The previous EA for the action could be helpful in making that determination if it demonstrated no effects, but EA/FONSI conclusions are made to determine whether an EIS is necessary, not whether a CE applies. Information from monitoring the activity over the five years may be helpful in developing a new CE for future similar activities, which would then be expected not to have any significant effects.

A CE would not be appropriate just because an action has become widely performed or no new information is available since the last EA, as each exempted action must still meet the CE criteria.

## **2.8: Can an incidental take (under ESA) meet the criteria of a CE?**

- A:** An Incidental Take Statement (ITS) is a Federal agency-to-Federal agency consultation, and as such, NMFS is generally not the lead agency for the action being addressed under the ESA. Therefore, issuance of an ITS does not require NEPA review by NMFS, but rather by the lead agency implementing the underlying action. The NEPA review would focus on the action being implemented, and not on the ESA determination.

Incidental Take Permits (ITP) are issued to private, state, and local entities seeking relief under Section 10 of the ESA. To receive an ITP, the applicant must present NMFS (and/or the USFWS) with a Habitat Conservation Plan (HCP) that meets the issuance criteria under Section 10. Because NMFS is the lead agency in issuing ITPs for listed fish and marine species, which will have potential resource effects, NMFS must comply with NEPA. Often, ITPs are issued jointly with the USFWS if the applicant is seeking relief for species listed by both agencies. In this case, both agencies act as joint lead agencies in compliance with NEPA.

[NAO 216-6 Section 6.03e2\(d\)](#) addresses EAs and EISs for ITP issuance. Generally, an EIS is prepared for HCP implementation and ITP issuance if the level of potential controversy is high; if other ITPs have been issued in the same vicinity or evolutionary significant unit; and because of the opportunity to involve the public in an ITP decision that may cover many species, activities, and acres. However, NAO 216-6 does allow for the preparation of an EA for ITPs.

Some HCPs and ITPs are considered to be “low effect” and qualify for a CE. [NAO 216-6 Section 6.03e2\(d\)](#) addresses CEs for low effect ITPs. These are generally those that involve a limited number of species and covered activities, and those that will occur on a small land base. Low effect ITPs must individually or cumulatively have a minor effect on the species covered in the HCP. To date, NMFS has filed very few CEs for ITP issuance.

If the action is determined to be appropriate for a low effect ITP, a memo to the record is the only NEPA document required, stating a summary of the action and the basis for determining that it is categorically excluded from further NEPA review. However, if a joint CE is prepared with USFWS, NMFS can adopt the form used by USFWS for its records. Examples of the NMFS CE memos are in the Exhibit Section of [NAO 216-6](#). In addition, the NMFS Northwest Region has one CE on record for a low effect ITP that can be used as a template.

### **3. Environmental Assessments**

#### **3.1: Is NOAA required to mail copies of EAs and EISs to EPA regional offices?**

**A:** NOAA is not required to mail copies of EAs to EPA regional or headquarter offices ([NAO 216-6 Section 5.03e3](#)). However, EAs are public documents and they can be requested by and should be made available to anyone.

EPA does require copies of EISs. Five bound copies of the DEISs and FEISs are required by EPA headquarters at time of filing. An additional three bound copies should be sent to each affected EPA region ([NAO 216-6 Section 5.04c3](#)). For more information regarding filing requirements refer to [Section 5.10 of the NOAA NEPA Handbook](#).

#### **3.2: Can an existing EA be used for a new FONSI?**

**A:** If the analysis is still applicable, an existing EA could be used as a basis for a new FONSI. However, with most dynamic resources, applicability of is often limited. For an existing EA to be used for a new action there must be no change in context or status of resources, and the analysis must still address current conditions. Another option would be to supplement the previous EA and develop a new FONSI. A Supplemental EA may be prepared when a significant change in the action is proposed beyond the scope of the original environmental review or when significant new circumstances or information arise that could affect the proposed action and its environmental impacts. For more information regarding supplemental documents refer to [Section 6.1 of the NOAA NEPA Handbook](#).

#### **3.3: If a draft EA/FONSI is nearing completion for a project but changes to the scope of the action have occurred, how does NOAA proceed? Can NOAA finalize the EA/FONSI even though it does not address this change to the project scope?**

**A:** If the proposed change reduces the scale of the project and the site conditions (location) do not change, the EA/FONSI determination should not be postponed. If, however, NOAA is considering moving the project to another site or creating another change that would have potential environmental impacts not analyzed in the current EA, then the determination should not be made. This will allow the EA to be revised to address these issues. However, this set of circumstances calls for a case-by-case review, and the NOAA NEPA Coordinator in PPI should be consulted.

#### **3.4: Is it possible to implement mitigation measures in an EA to reduce the scope of impacts from an action with significant impacts, requiring an EIS, to non-significant?**

**A:** Yes, for some EAs, if NOAA concludes that the predicted adverse impacts can be avoided, reduced, or minimized sufficiently to allow the action to occur with minimal impact on the environment, a mitigated FONSI statement can be prepared. NOAA may rely on mitigation measures to make a FONSI if the measures are imposed by statute or regulation, or are submitted by NOAA or an applicant as part of the original proposed action ([NAO 216-6 Section 5.03d](#)). This means that NOAA should not rely on the possibility of mitigation as a reason to avoid the EIS requirement.

## **4. Environmental Impact Statements**

### **4.1: What is the minimum time it takes to complete an EIS?**

**A:** The answer depends on project circumstances. In general the EIS process may take a year or more to prepare. Of course, there may be instances where an EIS could be completed in eight months, but this would be when all steps are completed as quickly as possible. Any time beyond one year typically relates to the complexity of the EIS and the amount of time needed to scope the issues, complete the analysis, address public input, and address any legal mandates that have been handed down from the courts.

The EIS process involves several stages of announcements, scoping, drafting, and reviewing of documents. Some of these stages have legally required time frames. The NOI requires a minimum of 30 days to provide an adequate opportunity for public comment. The NOA of a DEIS has a minimum 45 day comment period, and the NOA for an FEIS has a 30 day cooling off period before the ROD can be published. These requirements total 105 days (about 3.5 months), without including the time necessary to prepare materials and write the DEIS, conduct scoping, data analysis, and incorporate comments for the FEIS. Additionally, when dealing with regulations, issuance of the ROD after release of the FEIS needs to be coordinated with the issuance schedule of a Final Rule/Permit, etc.

### **4.2: What is the foundation for a good EIS document?**

**A:** The foundation for a good EIS is a well defined purpose and need. The purpose and need is a statement that specifies the underlying purpose and need to which an agency is responding in proposing the alternatives, including the proposed action ([CEQ regulations 40 CFR 1502.13](#)). The purpose and need explains why the action is being considered; it answers "Why is NOAA proposing this action?" The purpose and need serves as an important screening criterion for determining which alternatives are reasonable. All reasonable alternatives must meet the defined purpose and need.

### **4.3: How often is an agency required to prepare supplemental EISs?**

**A:** As a general rule of thumb, for ongoing programs, EISs that are more than 5 years old should be re-examined to determine if the criteria in [40 CFR 1502.9\(c\)](#) compel preparation of an EIS supplement. If NOAA has made a substantial change in a proposed action that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, a supplemental EIS must be prepared for an old EIS so that NOAA has the best possible information to make any necessary substantive changes in its decisions regarding the proposed action.

### **4.4: What information should be included in the ROD? How many pages does a ROD document need to be? Should the ROD address public comments on the FEIS?**

**A:** [CEQ regulations 40 CFR 1505.2](#) requires the ROD to contain the following information:

- 1) Statement of the final decision reached by the agency.
- 2) Identification of all alternatives considered by the agency in reaching this



decision and specification of which alternatives were considered to be environmentally preferable (relevant factors like technical and economic considerations should also be discussed).

- 3) Statement of whether all practicable means to avoid or minimize environmental impacts from the final selected alternative have been adopted and if not, why they were not.

There are no specific page limits for the ROD. Typically RODs are five to ten pages.

The ROD can contain a brief summary of comments received on the FEIS, but there is no requirement to address public comments on the FEIS in the ROD

**4.5: When can an EIS be released for public comment?**

- A:** A draft or final EIS can be released as soon as the NOAA NEPA Coordinator in PPI signs the “Dear Reviewer” letter for filing with EPA. [NAO 216-6 Section 5.04c.5](#) requires that no later than the date the document is filed with EPA, copies of each DEIS and transmittal letter to interested parties must be sent to those who may have an interest in the proposed action. *Note that the official comment period does not begin until the publication of the NOA.*

**4.6: Does an EIS have to identify a preferred alternative?**

- A:** If the preferred alternative is known at the time the DEIS is prepared, an agency should identify the preferred alternative in the DEIS. The preferred alternative must be identified in the FEIS ([40 CFR 1502.14e](#) and [NEPA's Forty Most Asked Questions, Question 4b](#)).

**4.7: Is it appropriate to take final action before an EIS is filed with the EPA?**

- A:** No, if an EIS has not been filed with the EPA, the comment period will still be open when final action is taken. [NAO 216-6 Section 5.04c6](#) states that, “a final agency decision on the proposed action may not be made or recorded less than thirty (30) days after the NOA for the FEIS is published in the Federal Register (the cooling off period), unless an exception is granted by EPA through the NEPA Coordinator.”

## **5. Procedures and Clearance**

**5.1: Is it possible that NOAA could give provisional approval for an action based on a draft NEPA document?**

**A:** No, actions may not go forward until the NEPA process is completed according to CEQ and NOAA guidelines. Provisional approval is not an option.

**5.2: How does NOAA incorporate a date for the receipt of comments for an EIS, if that date is incumbent upon the publication of the NOA, which NOAA won't know until after the letter starts circulating?**

**A:** In most circumstances, before the letters and EISs are circulated the RPM will be able to determine when the document will be filed with EPA and when the notice will be published in the *Federal Register*. For DEISs, a minimum 45 day comment period begins with the publication of the NOA in the *Federal Register*; FEISs have a minimum 30 day comment period. The end of the comment period should not end on a weekend day or Federal holiday. The deadline for filing at EPA is 3:00 pm Friday for publication in the *Federal Register* the following Friday. The RPM should be able to determine the date the NOA will be published and count the days to the end of the comment period. The letters should include this date for the end of the comment period even though this is before the NOA is published.

**5.3: Can Tribal governments serve as joint lead agencies for development of NEPA documents?**

**A:** Yes, Tribal governments can serve as joint lead agencies or as cooperating agencies when the proposed action is on or near a reservation. CEQ has several policy statements advocating tribal government collaboration. Federal agencies, together with state, tribal, or local agencies, may act as joint lead agencies. Refer to <http://ceq.eh.doe.gov/nepa/tribes.htm> for CEQ guidance regarding tribal participation. Refer to [Section 8.3 of the NOAA NEPA Handbook](#) for more information regarding lead agencies.

**5.4: Can Regional Fishery Management Councils (RFMC) serve as cooperating agencies and/or joint lead agencies for development of NEPA documents?**

**A:** No, due to their unique status, RFMCs can not serve as cooperating agencies or joint lead agencies during the development of NEPA documents. Refer to [Section 8.0 of the NOAA NEPA Handbook](#) for more information regarding cooperating agencies and lead agencies.

**5.5: In some situations when an agency sends hundreds of DEISs out on a project and many recipients do not respond, is it appropriate to send out a postcard asking that individuals or groups send the postcard back if they would like a copy of the FEIS?**

**A:** Yes, a postcard is an efficient way to determine the appropriate recipients of an FEIS. This can also be done with a DEIS. The postcard can also request the party indicate what type of media they would like to receive the document (paper copy or CD). It is required that an agency contacts or sends an FEIS to anyone who gave substantial comments on the DEIS or anyone who may be impacted. NOAA still sends copies to the agencies that received a draft version.

**5.6: Can CD copies of EISs be distributed to interested parties?**

**A:** Yes, for distribution to the public and other agencies CD copies of EISs are generally acceptable with hard copies available upon request. *Note that EPA does not accept CD copies of EISs.*

**5.7: Are there requirements or criteria under NEPA with respect to what constitutes a public meeting?**

**A:** There are no specific criteria for what constitutes a public meeting, but there is CEQ guidance, and NOAA NEPA guidance in NAO 216-6, on the various ways to conduct the scoping process. In general, meetings that are part of the scoping process require an official notice published in the *Federal Register*. The format of the meeting does not have to be a formal hearing. It can be set up as an informal “open house” or “public meeting” for informational purposes. This informal style is often very effective. In order to get the message out to the general public, advertisement of open houses/meetings in local newspapers is encouraged. Furthermore, to ensure adequate advanced notice, it is recommended that notices go out at least two weeks before scoping meetings, ideally 30 days beforehand. Also, whenever practicable and appropriate, NOAA should arrange to translate NEPA related public documents and notices for limited English speaking populations that are potentially affected. [Section 5.3 of the NOAA NEPA Handbook](#) for more information regarding scoping.

**5.8: Should cover letters for NEPA documents prepared for construction-related actions address availability of funding?**

**A:** The cover letters that go out to the public on these projects must identify where these projects stand on funding and timing. All EAs and EISs must identify that they are only the environmental studies required under NEPA on proposed NOAA projects.

**5.9: Do additional documents to the EIS, such as supplements and Biological Opinions, need to be bound when filing with the EIS with the EPA? Should these documents be specifically discussed in the EPA transmittal letter?**

**A:** Yes, all documents that go to EPA need to be bound in some manner. EPA will not accept loose pages. The transmittal letter should explain the supplements and their contents and refer to the Table of Contents within the supplements.

**5.10: For fishery management actions under the MSA, when should NMFS complete Section 7 consultation requirements under the ESA with respect to the NEPA compliance process?**

- A:** Fishery management measures approved and implemented by NMFS under the MSA must be consistent with all statutory requirements of both the ESA and NEPA. Under NMFS' "Operational Guidelines - Fishery Management Plan Process" (May 1, 1997), any ESA Section 7 consultation required for a given fishery management action (proposed FMP or FMP Amendment and implementing regulations or any other proposed FMP-related action) proposed by a RFMC must be completed prior to the RFMC's submission of its action for Secretarial review. (Refer to NMFS Operational Guidelines, Phase II (Preparation of Draft Documents), Section 5.7 under "Format for Fishery Management Plans"). Under the Operational Guidelines, this means that any Section 7 consultation for a RFMC's proposed management action must be completed prior to the initiation of Phase IV of the FMP process. (Under the Operational Guidelines, Phase IV is described as the "Final FMP/Amendment Review, Approval; Proposed Regulations and Final Rulemaking" or, "Secretarial Review"). The particular Section 7 consultation documents that must be completed prior to Secretarial review include either informal consultation documents or a Biological Opinion resulting from formal consultation. Completion of such documents entails their being signed by the appropriate agency official.

With respect to NEPA compliance, the above timing requirements for completion of Section 7 consultations under MSA procedures mean that such consultations will be concluded prior to final agency action on any NEPA document supporting an FMP, Amendment, or other fishery management action. Final agency action on an EA supporting a proposed fishery management action would entail signing the FONSI at the time of final agency approval/partial approval/disapproval of the action. Final agency action on an FEIS supporting a proposed fishery management action would entail filing the FEIS following the initiation of Secretarial review but sufficiently early to ensure that the 30-day cooling off period has concluded prior to final agency disposition of the management action (see Operational Guidelines, section E (Phase IV).3.IV-1 (8)).

The Operational Guidelines may be found at:  
[http://www.nmfs.noaa.gov/sfa/domes\\_fish/index.htm](http://www.nmfs.noaa.gov/sfa/domes_fish/index.htm).

**5.11: What is the clearance process for an EA/FONSI in the draft stage and thereafter?**

- A:** For a NOAA Fisheries action originating in a region, the regional NOAA Fisheries NEPA Coordinator should review these documents before they are released to the public. In addition, the NOAA NEPA Coordinator Staff in PPI asks to review all draft EAs that are going out for public comment before they are released. In the draft stage, the EA does not go through the NOAA NEPA Coordinator in PPI for official clearance. A draft EA may be released with only Office Director clearance.

Once the EA has been finalized and a FONSI is signed, the EA/FONSI package is submitted to the NOAA NEPA Coordinator for clearance and concurrence before the action can occur. If the EA changes between the draft and final stages the NOAA NEPA Coordinator Staff in PPI prefers to review it in advance of the receipt of the final package, to ensure a speedy clearance once the final arrives. Refer to [Section 4.9 of the NOAA NEPA Handbook](#) for more information on clearance processes.

**5.12: What is NOAA's process for commenting on another agency's NEPA document?**

- A:** Comments and concerns to other agencies on EAs or EISs should be coordinated through the NOAA NEPA Coordinator in PPI to ensure any conflicts are resolved or explained in the final comment letter to the other agency ([NAO 216-6 Section 2.02\(a\)\(6\)](#)). This is especially crucial for EISs that may have significant impacts on NOAA trust resources or involve comments from more than one program.

Individual NOAA programs should consult with the NOAA NEPA Coordinator as soon as they become aware of another agency's EA or EIS for which it would like to submit comments. When only one NOAA program is submitting comments, the NOAA NEPA Coordinator may instruct the program to submit its comments individually.

**5.13: Does NEPA have any short cuts in emergency situations or an emergency clause in its regulations?**

- A:** Emergency actions are subject to the same NEPA requirements as non-emergency actions. However, NEPA does have a clause for emergencies. The regulations state that an agency wanting to take an action with a significant environmental impact without observing the provisions of NEPA regulations are to contact NOAA NEPA Coordinator Staff in PPI who will work with CEQ to make alternative arrangements ([NAO 216-6 Section 5.06](#) and [40 CFR 1506.11](#)). The interpretation of emergency in NEPA terms is very limited.

## **6. Additional Questions**

### **6.1: Does NEPA apply to actions for regulations promulgated in response to a treaty?**

- A:** Yes, if NOAA is taking action for whatever reason (in response to treaties, legislation, funding, regulations, etc.), a NEPA analysis must be completed. If NOAA issues regulations in response to a treaty, that action would require NEPA analysis. If NOAA does not issue regulations in response to a treaty, NEPA would not apply to the signing. If regulations are proposed as a consequence of the treaty, NEPA analysis would be required. CEQ includes treaties in the list of policies, plans, and programs for which NEPA analyses are necessary. Refer to [NEPA's Forty Most Asked Questions, Question 24](#) and [CEQ regulations 40 CFR 1508.18\(b\)1](#) for more information.

### **6.2: What are the EPA Rating Definitions pertaining to NEPA documents and how do the ratings affect the document development process?**

- A:** EPA's rating system was developed to summarize EPA's level of concern with a proposed action. The ratings are a combination of alphabetical categories that signify EPA's evaluation of the environmental impacts of the proposal and numerical categories that signify an evaluation of the adequacy of the EIS. Unless the EIS is given a category 3 rating or an EU rating, document development is not usually impeded. Refer to <http://www.epa.gov/compliance/nepa/comments/ratings.html> for more information regarding EPA's ratings.

Below is a description of the alphabetical and numerical ratings.

#### *Environmental Impact of the Action*

##### LO (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

##### EC (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

##### EO (Environmental Objections)

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

#### EU (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

#### *Adequacy of the Impact Statement*

##### Category 1 (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

##### Category 2 (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

##### Category 3 (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

#### **6.3: Who can hire a contractor?**

- A:** For an EA, NOAA or the applicant of a grant application, permit, etc., may select and hire the contractor. For an EIS, NOAA is required to select and hire the contractor ([40 CFR 1506.5 \(c\)](#)).

#### **6.4: Is there any advice for working with contractors?**

- A:** Contractors can be a great resource. However, it is critical to have a clear statement of work and mutual understanding of the project at hand. It is incumbent on the agency not to abdicate its NEPA responsibilities solely because a contractor is handling the analysis. The agency must furnish guidance to the contractor and participate in the preparation of the EIS. The agency must also independently evaluate the EIS prior to its approval and be responsible for its scope and content.



Often, the primary issue with contractors is keeping them focused without expanding the scope of the work. Close monitoring will keep tasks on track and can save time and resources. In all situations, contractors should sign a short disclosure statement for EISs to prevent any financial or other conflict of interests in the outcome of the project ([40 CFR 1506.5\(c\)](#)). Refer to [Section 9.4 of the NOAA NEPA Handbook](#) for more information regarding contractors.

**6.5: What is the correct procedure for contacting other government agencies for information on endangered species, wetlands, historic preservation, etc., that may impact NOAA NEPA document preparation?**

**A:** There is no defined protocol for contacting other agencies. NOAA suggests that a letter requesting information, with a short synopsis of the proposed project be sent. Since these kinds of letters can take time to get a response, in addition, a call to the regional/field office to speak with someone directly may be helpful. In every instance, create and maintain a written record of the contact and response for the administrative record and advise those you talk to that you are doing so. Consideration should also be given early on to whether any of these entities should be included as cooperating agencies based on their special expertise.

**6.6: Can NOAA release a signed copy of the NOI prior to its publication in the *Federal Register*?**

**A:** Yes, NOAA can release the signed NOI before it is published in the *Federal Register*. While it is not a binding requirement by NEPA, standard practice is to provide a two week notice before a meeting is held. NOIs can be filed on any day of the week and appear a few days later. Generally, three days is required between filing and publication, however, under “emergency” situations, filings, and publications may occur overnight.

**6.7: Is NAO 216.6 accessible via the web?**

**A:** Yes, NAO 216-6 is available at [http://www.corporateservices.noaa.gov/~ames/NAOs/Chap\\_216/naos\\_216\\_6.html](http://www.corporateservices.noaa.gov/~ames/NAOs/Chap_216/naos_216_6.html) and [http://www.nepa.noaa.gov/NAO216\\_6\\_TOC.pdf](http://www.nepa.noaa.gov/NAO216_6_TOC.pdf). NAO 216-6 is also available by linking through NOAA's NEPA website at <http://www.nepa.noaa.gov>.

**6.8: How does NOAA address environmental justice issues in NEPA documents?**

**A:** Environmental justice is addressed in [EO 12898](#). It is referenced in [NAO 216-6 Section 7](#), and should be given consideration in evaluating alternatives that could disproportionately affect minority populations and low-income populations. The consideration of EO 12898 should be specifically included in the NEPA documentation for decision-making purposes. Unlike NEPA, the trigger for analysis under EO 12898 is not limited to actions that are major or significant. Federal agencies are mandated by EO 12898 to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. Thus, when applicable, environmental justice should be addressed in activities that require NEPA analysis, and also in instances where the activity is not considered major or significant and, therefore, does



not require NEPA analysis beyond a CE determination. For more information regarding environmental justice, refer to CEQ's, *Environmental Justice Guidance Under the National Environmental Policy Act* at: <http://ceq.eh.doe.gov/nepa/regs/ej/justice.pdf> and the EPA's website at: <http://www.epa.gov/compliance/environmentaljustice/index.html>.